

1 MORSBERGER, LLC

\*

BEFORE THE

2 Petitioner

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PLANNING BOARD OF

3 PLANNING BOARD CASE 386

\*

HOWARD COUNTY, MD

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5 **DECISION AND ORDER**

6 On July 8, 2009 the Planning Board of Howard County, Maryland, in accordance with Section 107.E  
7 and 108.F. of the Howard County Zoning Regulations, held a Public Hearing to consider the petition of  
8 Morsberger, LLC, for approval of a Preliminary Equivalent Sketch Plan (SP-09-009, Waverly Overlook) for a  
9 total of twenty-six (26) single-family detached (SFD) lots and five (5) open space lots to be developed by the  
10 Petitioner, consisting of 13.504± acres of land zoned Residential: Single Development (R-20). The subject  
11 site is located on the south side of Old Frederick Road (1700 feet west of Marriottsville Road) in the Third  
12 Election District of Howard County, Maryland, identified as Tax Maps 10 and 16, Parcels 207 and 224,  
13 Grids 21 and 4. Parcel 54 (owned by Howard County) adjoins Parcels 207 and 224 to the west. Adjoining  
14 the subject properties to the south are Parcels 220 (owned by Howard County) and 249 (owned by GTW  
15 Joint Venture). Parcel 60 (owned by Benjamin Williams and Lestine Romaine) and Parcel 191 (owned by  
16 Benjamin Williams and wife) border the proposal to the east. Old Frederick Road borders the proposal to  
17 the north. Parcels 54 and 220 are zoned RC-DEO (Rural Conservation-Density Exchange Option). Parcel  
18 249 is zoned PSC (Planned Senior Community) and Parcels 60 and 191 are zoned R-20 (Residential:  
19 Single).

20 The Technical Staff Report of the Department of Planning and Zoning, Certification of Advertising,  
21 Certification of Posting of the Property, Howard County Code, General Plan of Howard County, Howard  
22 County Zoning Regulations (effective 7/28/06) and the Howard County Zoning Map were made a part of the  
23 record of this case. A list of exhibits introduced into evidence by the Petitioner at the hearing is attached to  
24 this Decision and Order as Attachment 1.

1 Tanya Krista-Maenhardt, AICP of the Department of Planning and Zoning (DPZ) introduced DPZ's  
2 Technical Staff Report, which recommended approval of the Preliminary Equivalent Sketch Plan, subject to  
3 compliance with the remaining Subdivision Review Committee (SRC) comments. In her review, Ms. Krista-  
4 Maenhardt presented a brief overview of Sections 108.F.2. and 108.F.3. of the Howard County Zoning  
5 Regulations that allows certain R-20 zoned properties to be developed under R-ED regulations with  
6 Planning Board approval and provided they import density and meet certain acreage requirements.

7 Ms. T. CitaraManis, Planning Board member, spoke to the relocation of proposed Lot 14 and her  
8 concern of the current location and design of this "infill-type" lot. Ms. Krista-Maenhardt affirmed that the  
9 Department of Planning and Zoning had been in discussions with the consultant regarding the lot's  
10 relocation to allow for a more suitable design. Ms. Krista-Maenhardt deferred further comment on this issue  
11 to the consultant-Fisher, Collins and Carter (FCC).

12 Gary Rosenbaum, Vice-Chairperson, asked if the sending parcel had been identified at this time.  
13 Ms. Krista-Maenhardt stated the applicant had not yet determined the identity of the sending parcel but the  
14 applicant would not be required to identify the sending parcel until Final Plan stage.

15 David Grabowski, Chairperson, asked for confirmation on traffic and operating level-of-service  
16 on Old Frederick Road (in front of this proposed project). Ms. Krista-Maenhardt confirmed that the  
17 intersection of Maryland Route 99 and Marriottsville Road is currently operating at a level-of-service "E" (an  
18 acceptable level of operation) but would improve to a level of service "A" after implementation of  
19 intersection improvements related to the GTW's Waverly Woods project.

20 The Petitioner was represented by Mr. Joseph Rutter and the project engineer, Mr. Terry Fisher of  
21 Fisher, Collins and Carter, Inc. Mr. Rutter addressed the three criteria to be considered by the Planning  
22 Board, entered applicants' exhibits # 1 through #4 and gave a presentation of all aspects of the proposed  
23 development. Mr. Rutter explained how the subdivision was designed to preserve the sensitive  
24 environmental areas and provide much more open space than would have been provided under the R-20  
25 zoning regulations. In addition, he discussed the improved location of open space, the value of the more

1 restrictive R-ED setbacks in terms of protection of on-site environmental resources, forest conservation  
2 easements and the ability to meet all forest conservation requirements on-site, and the improved location of  
3 the storm water management facility.

4 Mr. Fisher then explained the advantages of the R-ED design with respect to open space access,  
5 pointing out Open Space lot 30 (containing the forest retention area) would now have direct access onto the  
6 proposed cul-de-sac and also explained the advantages of the recreational open space location. He also  
7 overviewed the history of the existing easement/dirt driveway that provides access to the County landfill. He  
8 stated that his client worked with the County to create Open Space lot 29 to allow the driveway and  
9 easement to be contained within a single open space lot.

10 In addressing the concerns of Ms. T. CitaraManis regarding proposed residential Lot 14, Mr. Fisher  
11 expressed his desire to relocate Lot 14 and explained the need to finalize road profiles and grading in order  
12 to determine whether or not Lot 14 could be relocated to the end of the cul-de-sac of "road A" and how best  
13 to reposition the recreational open space. He also pointed out that he could not simply remove Lot 14 from  
14 the proposal because of the requirement of Section 108.F.2. to import density.

15 Mr. Rosenbaum asked Mr. Fisher if the sending parcel had been identified at this time. Mr. Fisher  
16 replied, "no, not at this time".

17 Mr. Cornelius Trotman of Baltimore, Maryland inquired about the extension of sewer to the subject  
18 parcels as well as intervening parcels. Mr. Fisher stated that the extension of sewer had been approved by  
19 the Department of Public Works (DPW), rights-of-way have been prepared and appraisals have also been  
20 conducted.

21 Mr. Ben Williams of 11293 Old Frederick Road expressed his concerns about density, road  
22 dedication, drainage and possible soil contamination as a result of the adjacent landfill.

23 Mr. Rutter responded that this project would indeed require right-of-way dedication. Mr. Rutter  
24 pointed out the new Council Bill 50-2008 allowed for the density and lot size as shown. Mr. Rutter explained  
25 this legislation was not available at the time Mr. Williams was developing his property. Mr. Rutter stated that

1 contamination concerns were being addressed by the use of public water and sewer versus on-site well and  
2 septic. Mr. Rutter then explained how drainage for the project will be addressed and indicated how water  
3 flow would be directed into the stormwater management facility. Ms. CitaraManis asked Mr. Rutter to  
4 confirm that drainage would not affect Mr. Williams' property. Mr. Rutter affirmed that runoff would not affect  
5 Mr. Williams' property and that flooding should not occur as water would be directed to a pond versus the  
6 on-site floodplain.

7 Mr. Rutter again pointed out to the Board the fact that they were not maximizing density on site-that  
8 although they were permitted two additional development rights, they were importing only one.

9 Ms. CitaraManis again asked for clarification on the sending parcel. Ms. Cindy Hamilton, Chief,  
10 Division of Land Development clarified that the identity of the sending parcel would be determined at Final  
11 Plan stage.

12 Mr. Dave Grabowski, Chairperson, closed the hearing and the Board proceeded to deliberate and  
13 vote on the case in open session. After careful evaluation of all of the testimony and documentary evidence  
14 presented at the hearing, the Howard County Planning Board made the following Findings of Fact and  
15 Conclusions of Law.

#### 16 **FINDINGS OF FACT**

- 17 1. The Preliminary Equivalent Sketch Plan, SP-09-009, proposes 26 SFD lots, 5 open space lots and 2  
18 public roads.
- 19 2. This project is subject to compliance with the Amended Fifth Edition of the Subdivision and Land  
20 Development Regulations, the Howard County Zoning Regulations (effective 7/28/06) and the  
21 Adequate Public Facilities Ordinance (APFO).
- 22 3. The area of the 26 proposed SFD lots is approximately 4.230 acres and the credited area of the 5  
23 proposed open space lots is approximately 6.796 acres or 50.3 percent of the site.
- 24 4. The proposed lay-out of lots and open space effectively protects environmental resources. The  
25 proposed layout of the subdivision has taken into account the environmental features on this parcel

1 of land. The Little Patuxent River and its associated stream buffers, wetlands and wetland buffers  
2 will be protected within a forest retention easement located within proposed Open Space Lot 30. To  
3 facilitate the protection of forest and to fulfill the objectives of the R-ED zoning district and Section  
4 108F.3., the residential lots have been clustered and created with lot sizes near the allowable  
5 minimum of 6,000 square feet and open space has been provided in excess of the required 50%  
6 obligation (6.752 acres required, 6.796 acres provided). There are no historic resources on site.

7 5. Buildings, parking areas, roads, storm water management facilities and other site features are  
8 located to take advantage of existing topography and to limit the extent of clearing and grading. The  
9 proposed public road, stormwater management facilities and house site locations have been  
10 designed so as to avoid disturbances to on-site environmental features. The required forest  
11 conservation obligation is being met on-site through retention and planting and will be located on  
12 Open Space lots. A total of 1.9 acres of retained forest (credited retention and forested floodplain)  
13 and 0.9 acre of planting will be placed under protective easement. The stormwater management  
14 facility and utilities have also been designed to minimize disturbance to the existing environmental  
15 features located on-site. The stormwater management features are located near the topographic low  
16 point of the site but are located outside of the floodplain and stream buffer of the Little Patuxent  
17 River.


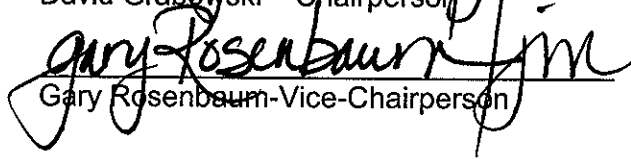
18 6. Setbacks, landscaped buffers, or other methods are proposed to buffer the development from  
19 existing neighborhoods or roads, especially from designated scenic roads or historic districts. The  
20 site is not located within a designated historic district and historic features do not exist on site. Old  
21 Frederick Road is not considered a scenic road. Type "B" landscaping (1 shade tree per 50 feet and  
22 1 evergreen per 40 feet) will be provided within HOA owned Open Space lots 27 and 28 which lie  
23 adjacent to Old Frederick Road. All new dwellings will be located more than 75' from existing,  
24 adjacent homes, with the closest existing home being approximately 230 feet from any newly  
25

1 proposed dwelling. A substantial forest conservation buffer will be planted along the eastern edge of  
2 the community.

3 **CONCLUSIONS OF LAW**


4 The Preliminary Equivalent Sketch Plan, SP-09-009, satisfies all of the standards for approval of the plan  
5 cited in Sections 108.F.2. and 108.F.3. of the Howard County Zoning Regulations. For the foregoing  
6 reasons, the petition of Morsberger, LLC, for approval of Preliminary Equivalent Sketch Plan, SP-09-009, for  
7 26 proposed SFD lots, 5 proposed open space lots and proposed public roads on approximately 13.504  
8 acres of land, zoned R-20, is this 17<sup>th</sup> day of August, 2009, **approved** by the Planning  
9 Board of Howard County.

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12 **HOWARD COUNTY PLANNING BOARD**

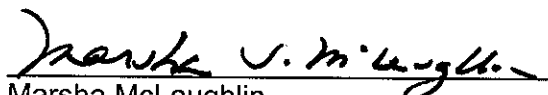
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David Grabowski – Chairperson  
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Gary Rosenbaum-Vice-Chairperson

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Linda A. Dombrowski

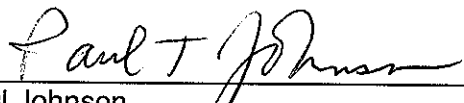
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Tammy J. CitaraManis

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Paul Yelder

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22 ATTEST:

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24 Marsha McLaughlin  
Executive Secretary

1 REVIEWED FOR LEGAL SUFFICIENCY BY:  
2 HOWARD COUNTY OFFICE OF LAW  
3 MARGARET ANN NOLAN, COUNTY SOLICITOR

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5 Paul Johnson  
6 Deputy County Solicitor  
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**Attachment 1**

**LIST OF APPLICANT'S EXHIBITS**

**PB-386 (SP-09-009), Waverly Overlook**

1. Aerial photograph of existing site
2. Waverly Overlook -Illustrative Example (site designed under R-20 regulations)
3. Waverly Overlook-Illustrative Example (site designed under R-ED regulations)
4. Waverly Overlook-Illustrative Example (overlay showing additional open space provided with R-ED design)

**LIST OF PROTESTANT'S EXHIBITS**

None were introduced.